

MINUTES

North Dakota State Water Commission Telephone Conference Call Meeting Bismarck, North Dakota

July 18, 2001

The North Dakota State Water Commission held a telephone conference call meeting in the Governor's conference room, State Capitol, Bismarck, North Dakota, on July 18, 2001. Governor-Chairman, John Hoeven, called the meeting to order at 10:30 AM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Jeff Olson, representing Roger Johnson, Commissioner,
Department of Agriculture, Bismarck
Charles Halcrow, Member from Drayton
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

OTHERS PRESENT:

Dave Koland, North Dakota Rural Water Association, Bismarck
Joe Bichler, Bartlett & West Engineers, Bismarck
Ray Christensen, Southwest Water Authority, Dickinson
Blake Nicholson, Associated Press, Bismarck
Julie Krenz, Assistant Attorney General, Bismarck
State Water Commission Staff

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

**CONSIDERATION OF DRAFT
MINUTES OF MAY 22, 2001
STATE WATER COMMISSION
MEETING - APPROVED**

The draft minutes of the May 22, 2001 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Thompson, and unanimously carried, that the draft minutes of the May 22, 2001 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF DRAFT
MINUTES OF MAY 30, 2001
STATE WATER COMMISSION
TELEPHONE CONFERENCE
CALL MEETING - APPROVED**

The draft minutes of the May 30, 2001 State Water Commission telephone conference call meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Thompson, and unanimously carried, that the draft minutes of the May 30, 2001 State Water Commission telephone conference call meeting be approved as prepared.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND CONSTRUCTION
STATUS; AND PROJECT UPDATE
(SWC Project No. 1736)**

James Lennington, Project Manager for the Southwest Pipeline Project, provided the following contract, construction, and project status report:

Contract 5-3A - Second New England Reservoir: USDA, Rural Development has approved proceeding with the design and construction of the second New England reservoir using excess Hettinger-Reeder and Mott-Elgin funding, which could amount to \$1.1 million without the tank, depending on contingencies. Initially, this tank was to be included in the Bowman-Scranton phase. The estimated cost of the tank, including engineering, is \$760,000. Without the tank, there could be as much as \$250,000 in excess funding on Mott-Elgin. Bartlett & West Engineers is near completion with the design of the tank that will be 67 feet in diameter and 48 feet high with a capacity of 1,240,000 gallons. The bid opening on the tank is scheduled for July 18, 2001.

Contract 5-8 - Twin Buttes Reservoir: The Twin Buttes tank, located one mile north of Bowman, will be 42 feet in diameter and 25 feet high with a capacity of 249,000 gallons. The estimated cost of the tank, including engineering, is \$298,000. The bid opening on the tank is scheduled for July 18, 2001.

Contract 7-6A - Rural Distribution System, Burt Service Area: This contract includes approximately 235 miles of pipeline serving about 167 service connections. Nearly all construction work on this contract has been completed. The final completion date for the project was July 1, 2001. All but three service connections were turned over for service by the final completion date. Four additional service connections have been added to this contract by field orders as "construction users" with another one pending. Some additional time was granted for construction of those services.

Contract 7-6B - Rural Distribution System, Coffin Buttes Service Area: Contract 7-6B is the final contract of the Mott-Elgin regional service area and was awarded to Northern Improvement Company on April 9, 2001. The contract is for approximately 137 miles of pipeline serving about 85 rural connections. All but 26 miles of pipe have been plowed in on this contract. The contract has an intermediate completion date of October 12, 2001 for service to 30 users, and a final completion date of December 12, 2001.

Contract 7-7A - Rural Water Distribution System, Twin Buttes Service Area: This contract includes about 123.5 miles of rural water distribution pipelines serving 99 service connections with "branch" lines coming off of the contract 2-4C main transmission pipeline. It serves the rural area primarily in Bowman County east of Bowman and a small portion of southern Slope county. The estimated cost of contract 7-7A is \$2,299,000 including engineering. The bid opening on this contract is scheduled for July 26, 2001.

Bowman-Scranton Regional Service Area - Funding and Other Contracts: The State Water Commission's budget for the 2001-2003 biennium includes \$37.6 million from the Water Development Trust Fund. Of that amount, \$7.3 million was allocated to the Southwest Pipeline Project.

The current estimated project cost, including engineering and other costs, of contract 2-4C, the Twin Buttes service area main transmission pipeline, is \$1,859,000. The estimated project cost for contract 5-8, the Twin Buttes reservoir, is \$300,000. Telemetry project costs for the main transmission pipeline and the Twin Buttes reservoir are estimated to be \$154,000. All together these three total \$2,313,000, which is less than the state grant portion of the proposed 2001 funding for the Bowman-Scranton regional service area.

The bid opening on contract 7-7A is scheduled for July 26, 2001. The estimated project cost for contract 7-7A is \$2,299,000. If, and when, contract 7-7A is awarded, the total funding commitments for Bowman-Scranton will exceed the state grant portion of the proposed funding package for 2001, but will not exceed the state grant total for the biennium.

An application has been submitted to USDA, Rural Development for funding the 2001 phase of construction, but the application has not yet been approved.

The proposed funding for the Bowman-Scranton regional service area is shown in the following table, and reflects the funding levels agreed to with USDA, Rural Development:

**Bowman-Scranton Phase Funding
(in million dollars)**

Year	State Grant	USDA Grant	USDA Loan	Yearly Total
2001	\$ 3,140,000	\$ 715,000	\$ 875,000	\$ 4,730,000
2002	\$ 3,710,000	\$ 845,000	\$ 1,035,000	\$ 5,590,000
Totals	\$ 6,850,000	\$ 1,560,000	\$ 1,910,000	\$ 10,320,000

The projected construction schedule and estimated costs for the Bowman-Scranton regional service area are shown in the following table (the estimated costs shown in the table below are more current and have not been updated in the above funding table):

**Bowman-Scranton Phase Funding
Projected Construction Schedule and Estimated Cost**

2001 Funding (Phase I)

Contract	Facility	Size	Estimated Cost
5-8	Twin Buttes Reservoir	235,000 gallons	\$ 300,000
2-4C	Main Transmission Pipeline	32.5 miles (10" - 4")	1,859,000
7-7A	Twin Buttes Service Area (east)	99 users	\$ 2,299,000
6	SCADA, Telemetry		154,000
2001 Total			\$ 4,612,000

2002 Funding (Phase II)

Contract	Facility	Size	Estimated Cost
7-3C	Amidon Pocket	26 users	\$ 1,052,000
5-13A	Second David Buttes Reservoir	1,000,000 gallons	665,000
4-1B	Additional Raw Water Line Pumps		1,210,000
7-7B	Twin Buttes Service Area (west)	74 users	2,663,000
2002 Total			\$ 5,590,000
Bowman-Scranton Total			\$ 10,202,000

On May 8, 2001, the city of Amidon held a special election on service from the Southwest Pipeline Project as a public water system or as individual rural connections. The city voted down the proposal for a public water system. At its meeting on July 6, 2001, the Southwest Water Authority voted to extend the final sign-up date for the Amidon pocket until August 3, 2001 to give the residents adequate time to consider individual rural connections. Both the Amidon pocket and a pocket of 30 users around Rhame exceed the State Water Commission's feasibility criteria for individual services with estimated costs but are close enough to bid. Another pocket south of Bowman, the Bowman-Haley pocket area, also exceeds the feasibility criteria individual limit and may be reconfigured prior to bidding.

Coteau Mine Crossing: The Coteau Properties Company intends to construct a coal haul road and dragline road across the Southwest Pipeline Project's 30-inch diameter steel raw water pipeline near Coteau mine in Mercer county. When the Southwest Pipeline Project was originally constructed in this area in 1989, Coteau Properties stated its intentions to mine the area some day, but there was no practical way to avoid the mineable coal reserves with the Southwest Pipeline Project's route. Coteau was planning this crossing for 2004 but, subsequently, moved it up to the spring of 2002. Basin Electric Cooperative has a 42-inch prestressed concrete cylinder pipeline in the same affected area. Several meetings have been held with Basin Electric to discuss options and concerns with this crossing. Bartlett & West Engineers has investigated several alternatives including replacing the pipe, encasement in concrete, and construction of a bridge over the pipeline beneath the haul road. It has been determined the best method of protection will be to construct a bridge beneath the haul road. The Southwest Pipeline's share of the estimated cost for construction is \$125,000-\$175,000, with engineering costs of an additional \$30,000. The loss of coal to Coteau because of the Southwest Pipeline Project, will cost another \$9,800.

It is anticipated to advertise for bids on this work by August 10, 2001, with the bid opening on August 30, 2001. Completion of the contract will be scheduled for the end of November, 2001. Because of the critical timing associated with this contract, it is intended to request the State Water Commission to consider pre-authorizing the award of a contract at its August 16, 2001 meeting. This approach is similar to the one taken for the influent piping at the Dickinson water treatment plant in the spring of 2000.

Resignation of Southwest Water Authority Manager/CEO, Pinkie Evans-Curry: Pinkie Evans-Curry resigned her position as Manager/CEO of the Southwest Water Authority, effective July 31, 2001. At its July 6, 2001 meeting, the Southwest Water Authority appointed Operations Chief, Ray Christensen, as the interim manager, and began the process of selecting a new manager.

**SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 2-4C,
TWIN BUTTES SERVICE AREA,
MAIN TRANSMISSION PIPELINE
(BOWMAN-SCRANTON)
(SWC Project No. 1736)**

On May 30, 2001, bids were opened for Southwest Pipeline Project contract 2-4C for the Twin Buttes Service Area, Main Transmission Pipeline, that will serve the Twin Buttes service area, including the city of Scranton and future rural water service

connections. The contract documents specifies the State Water Commission has 90 days to award the contract after the bid opening, which occurs on August 28, 2001. This contract is for approximately 32.5 miles of 10-inch, 8-inch, and 4-inch lines.

James Lennington explained the four bid schedules included in the bid package. Bid schedule 1 was the base bid; and bid schedule No. 2 upsized a portion of the 8-inch pipe to 10-inch, and changed the pressure class of another portion from class 160 (107 psi) and class 200 (133 psi) to class 250 (167 psi). These changes would enable the contract 2-4C pipeline to deliver an additional 300 gallons per minute to the Twin Buttes service area to meet potential future capacity needs. The project engineer's estimate of the costs of the upsizing and upclassing was \$175,613.

Some additional changes, including a storage reservoir and booster pump station totalling an estimated \$450,000, would also be needed at the time the demand developed, but Mr. Lennington said those additions can be deferred until they are needed.

Bid schedule 2 also included a turnout for the future tank. Future demand for water could develop if the city of Bowman were to reconsider its decision not to take water from the Southwest Pipeline Project, or if there was significant energy development in the area. The Gascoyne mine area has been one of those areas under scrutiny for development of a coal-fired electric generating station. The additional capacity, while not sufficient to provide cooling water to a power plant, would provide flexibility in addressing a population influx in the area.

Bid schedules 1A and 2A were added to the contract bidder's proposal by addendum. Schedules 1A and 2A substituted prefabricated steel vaults from a manufacturer new to the Southwest Pipeline Project, Flo-Pak, Inc., of Atlanta, Georgia.

There were five bids received from the following for contract 2-4C: Northern Improvement Company, Bismarck, ND; Nygard Construction, Garrison, ND; Abbot, Arne & Schwindt, Moorhead, Minnesota; Larry's, Inc., Gillette, Wyoming; and George Haggart, Fargo, ND. The project engineer has reviewed the bids and recommended the award of contract 2-4C to Nygard Construction, Garrison, ND. The incremental cost of the

Flo-Pak vault substitution in Nygard's bid was \$8,000 on bid items totalling \$188,600 in bid schedule 1 and \$214,800 in bid schedule 2. Mr. Lennington said the incremental cost could not be justified and, therefore, an award based on schedule 1A or 2A will not be recommended. All of the bids received for schedules 1A and 2A were at a higher cost than those for bid schedules 1 and 2.

The incremental cost to upsize and upclass the pipeline, providing the flexibility to increase capacity by 300 gallons per minute, in Nygard's bid was \$149,443.50. This cost also includes a turnout for the future tank if needed. The project engineer's estimate of the difference was \$175,613. Mr. Lennington explained that while significant, this cost is much less than that of paralleling the pipeline, which is what would be necessary to provide increased capacity if the need were to develop. The estimated cost to parallel the pipe with current pipe prices is \$1,258,000. Bid schedule 2 from Nygard Construction is also lower than the next lowest bid for schedule No. 1 from Northern Improvement by \$153,211.50.

Funding for this contract will come from the \$7.3 million allocated to the Southwest Pipeline Project out of the \$37.6 million authorized by the 2001 Legislative Assembly from the Water Development Trust Fund. An application has been submitted to USDA, Rural Development for funding of the first phase of the Bowman-Scranton regional service area of the Southwest Pipeline Project. This application has not yet been approved. Mr. Lennington explained that funding from USDA, Rural Development will not be needed for contract 2-4C, but Rural Development's approval of the award is necessary for its inclusion in future funding. On July 3, 2001, notice was received of USDA, Rural Development's concurrence in the project engineer's recommendation to award a contract to Nygard Construction. The additional capacity of bid schedule 2 was discussed with USDA, Rural Development prior to advertising for bids and they have agreed to its inclusion in the funding package.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 2-4C, Twin Buttes Service Area, Main Transmission Pipeline (Bowman-Scranton), based on bid schedule 2, to Nygard Construction of Garrison, ND. Affirmative action by the State Water Commission on the award of the contract is contingent upon the satisfactory completion and submission of the contract documents, and the Commission's legal review.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve the award of Southwest Pipeline Project contract 2-4C, Twin Buttes Service Area, Main Transmission Pipeline (Bowman-Scranton), based on bid schedule 2, to Nygard Construction, Garrison, ND. This motion is contingent upon the satisfactory completion and submission of the contract documents, and the Commission's legal review.

Commissioners Halcrow, Hanson, Hillesland, Olin, Jeff Olson representing Commissioner Johnson, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**NORTHWESTERN DAIRY, LLLP,
FOR COST SHARE IN WATER
SUPPLY SYSTEM -
DETERMINATION THAT PROJECT
SERVES PUBLIC PURPOSE
(SWC Project No. 1293)**

At the May 22, 2001 meeting of the State Water Commission, the Commission voted to approve a 50 percent cost share of the eligible items, not to exceed \$91,240 from the Contract Fund in the 1999-2001 biennium, for the water supply facilities to

NorthWestern Dairy, LLLP, in Mountrail county. The motion was contingent upon the availability of funds; and a determination by the Assistant Attorney General to ensure that providing state funds is consistent with state law.

According to the managing general partner, the dairy will begin operating this summer with 400 head of dairy cows and will gradually build to 800 head by the end of the 20th month of operation. Water requirements in the beginning are estimated at 25,000 gallons per day, growing to 80,000 per day at 800 head capacity.

In a memorandum, dated May 29, 2001, and attached to these minutes as **APPENDIX "A"**, Julie Krenz, Assistant Attorney General, addressed the issues of whether the State Water Commission has the statutory authority to provide the grant funds; and because public funds may only be used for public purposes, whether granting funds to the dairy serves a "public purpose".

Ms. Krenz determined that the State Water Commission has the statutory authority to provide funds to the dairy for a water pipeline. She also explained whether the grant to a private dairy serves a public purpose and said this is a question of fact and, consequently, must be determined by the Commission. The guidelines for determining whether the grant serves a public purpose are more fully explained in the memorandum. A

grant may be made to a private person or entity and still serves a public purpose. A public purpose is one that promotes the general welfare. Courts have determined that grants made to promote economic development serve a public purpose. Attached to the memorandum is a report from Larry Lestritz, North Dakota State University, Fargo, ND, which estimates the economic impacts of additional dairying on North Dakota's economy.

In discussion, it was the consensus of the State Water Commission that the proposed dairy project does serve a public purpose based on economic development activity and jobs creating employment for the citizens of North Dakota. In addition, plans from a rural water district in the area indicate that the water supply line to the dairy will be incorporated into the rural water district system. Cost participation in rural water district projects has been considered a public use of funds.

It was the recommendation of the State Engineer that the State Water Commission declare that NorthWestern Dairy, LLLP, serves a public purpose, and that it provide the 50 percent cost share for water supply facilities, previously approved at the May 22, 2001 State Water Commission, contingent upon the availability of funds.

It was moved by Commissioner Hanson and seconded by Commissioner Thompson that the State Water Commission declare that NorthWestern Dairy, LLLP, serves a public purpose, and that it provide the 50 percent cost share of the eligible items, not to exceed \$91,240 from the Contract Fund, for the water supply facilities previously approved at the May 22, 2001 State Water Commission meeting. This motion is contingent upon the availability of funds.

Commissioners Halcrow, Hanson, Hillesland, Olin, Jeff Olson representing Commissioner Johnson, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

DEVILS LAKE UPDATE (SWC Project No. 416-01)

temporary emergency outlet were discussed. At the May 22, 2001 meeting, the State Water Commission passed a motion to shift the location of the Devils Lake state temporary emergency outlet from the Twin Lakes route to the Peterson Coulee route; and that the funds of \$500,000, approved at the December 8, 2000

Secretary Frink reported the current elevation of Devils Lake is 1447.78.

Efforts relative to the Devils Lake state

State Water Commission meeting, be made available for the preliminary design and other items necessary to reach the construction phase of a temporary outlet along the Peterson Coulee route in the shortest possible time frame. Secretary Frink stated the closing date is July 30, 2001 for accepting Requests For Proposal for an engineering consultant for the preliminary design and layout of the temporary emergency outlet.

**NORTHWEST AREA WATER
SUPPLY PROJECT UPDATE
(SWC Project No. 237-04)**

On January 19, 2001, the Secretary of the Interior, in consultation with the Administrator of the Environmental Protection Agency, determined that the

Northwest Area Water Supply Project meets the requirements of the Boundary Waters Treaty of 1909. The document listed several commitments that the project would include to prevent interbasin biota transfer. This determination satisfies the requirements within the 1986 Garrison Diversion Reformulation Act for MR&I projects transferring water from the Missouri River into the Hudson Bay basin.

The Bureau of Reclamation completed the final environmental assessment and the environmental decision document - the Finding of No Significant Impact (FONSI), which was executed at the end of May, 2001. The project was formally submitted to the government of Canada through a diplomatic note. Thirty days were allowed for Canadian comments before construction can begin. Secretary Frink indicated there is some uncertainty as to when the 30-day deadline occurs, but to his knowledge, the Canadian State Department has not commented on the FONSI to date. If this process is successful, advertisement for the construction bids on the first phase of the pipeline to Minot could begin in late 2001.

Governor Hoeven requested that Secretary Frink contact the Canadian State Department relative to the Finding of No Significant Impact, and provide the Governor with a status report.

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for August 16, 2001, beginning at 1:30 PM in the

State Office Building lower level conference room in Bismarck, ND.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the telephone conference call meeting at 11:00 AM.

John Hoeven
Governor-Chairman
North Dakota State Water Commission

SEAL

Dale L. Frink
North Dakota State Engineer,
and Chief Engineer-Secretary to the
North Dakota State Water Commission